

**MINUTES**  
**of the**  
**WATER AND NATURAL RESOURCES COMMITTEE**

**August 7-8, 2003**  
**Ruidoso Convention Center**  
**Ruidoso**

The August meeting of the Water and Natural Resources Committee was called to order by Senator Carlos R. Cisneros, chair, at 10:10 a.m. on August 7, 2003 in the Ruidoso Convention Center in Ruidoso.

**PRESENT**

Sen. Carlos R. Cisneros, chair  
Rep. Joe M Stell, vice chair  
Sen. Sue Wilson Beffort  
Rep. Joseph Cervantes  
Sen. Mary Jane M. Garcia (8/8)  
Rep. Dona G. Irwin  
Rep. Larry A. Larranaga  
Rep. James Roger Madalena  
Rep. Andy Nunez  
Sen. Mary Kay Papen (8/8)  
Rep. Henry Kiki Saavedra  
Sen. H. Diane Snyder  
Rep. Don Tripp  
Rep. Robert White

**Advisory Members**

Rep. Anna M. Crook  
Sen. Gay G. Kernan (8/8)  
Rep. Rhonda S. King  
Sen. Nancy Rodriguez (8/8)  
Sen. Leonard Tsosie

**ABSENT**

Sen. Joseph J. Carraro  
Sen. Dede Feldman  
Rep. Brian K. Moore  
Sen. Shannon Robinson

Rep. Ray Begaye  
Sen. Clinton D. Harden, Jr.  
Sen. Timothy Z. Jennings  
Sen. Steve Komadina  
Rep. Ben Lujan  
Rep. Danice Picraux  
Sen. Leonard Lee Rawson  
Rep. Mimi Stewart  
Rep. Eric A. Youngberg

(Attendance dates are noted for those not present for the entire meeting.)

**Staff**

Gordon Meeks  
Jon Boller  
Alicia Collins

## **Guests**

The guest list is in the meeting file.

## **Thursday, August 7**

### **PECOS RIVER COMPACT COMPLIANCE STATUS**

John D'Antonio, state engineer, explained House Bill (HB) 417 (2002), which guides how the Interstate Stream Commission (ISC) may purchase and retire water rights in the Pecos River valley to ensure delivery of water to Texas. Estevan Lopez, executive director of the ISC, reported that in the Carlsbad region, offers were received for 7,500 acres but only 4,500 acres were needed. In the Artesia-Roswell area 18,900 acres were received and only 7,500 were needed. Prior to making purchases, the ISC is required to conduct appraisals and a market study of water rights. However, by entering the market, the state has affected current market prices, and the offers total more than market studies indicated they would.

Questions and discussion by the committee addressed:

- produced water;
- plans for the use of the property purchased;
- the portion of offered rights that are good offers and can actually be used for compliance;
- requests for copies of the settlement agreement;
- whether the offers are adjudicated or non-adjudicated water rights;
- implications of this kind of settlement as opposed to administration of priority rights; and
- that this settlement will be part of the court's decreed water rights adjudications.

## **EXECUTIVE SESSION**

### **RUIDOSO AREA WATER ISSUES**

Lorri McNight, Ruidoso Village manager, and Leon Eggleston, mayor, welcomed the committee to Ruidoso. They told the committee that Ruidoso has a lot of water rights but very little wet water. Ruidoso is in a serious water shortage, with 7,500 residents year-round, and a population that swells to 35,000 at times during the summer. The Village Council has decided to move into the next stage of water conservation. Ms. McNight said the village normally gets 4.5 inches of rain in July but has had only three-tenths of one inch so far. Phase 3 of the village's drought management plan allows no watering except by hand-held hose. The bottom line: Ruidoso needs new sources of water.

Committee questions and discussion addressed:

- new development restrictions;
- regional cooperation (with Alamogordo and other cities and counties);
- the water utility rate structure;
- restrictions on car washing; and
- forest thinning.

Patsy Sanchez, Lincoln County planning director, addressed the committee about loopholes in the New Mexico Subdivision Act. She told the committee that there is little that counties can do to manage water consumption until the legislature gives more water conservation authority under the subdivision law.

Questions and discussion addressed:

- differences in water conservation ordinances between different jurisdictions;
- the need for a uniform water conservation policy; and
- whether the loopholes are unfair.

### **ALAMOGORDO-TULAROSA VALLEY WATER SUPPLY ISSUES**

Dan Abercrombie, representing a Tularosa water rights association, said that during the 1970s and 1980s precipitation was well above average. He said that area resident became accustomed to plentiful water, but water levels are falling now. He told the committee that if there is a new well field above Tularosa, the area may not get the recharge of its aquifer. The well field will intercept the existing flow from the mountains, which may cause salt water encroachment from the west and lowering of the existing aquifer. The people of Tularosa, he said, are very concerned. There are 1,081 well owners around Tularosa who will not benefit from the deal the Village of Tularosa made with Alamogordo. Property values are declining around Tularosa. He asked the Office of the State Engineer to do projections out 50 or 60 years to see if Tularosa will be adversely affected.

Pat McCourt, city manager of Alamogordo, explained where the city gets its water. He said that in the long term, the city will need to acquire more water rights. In the next 40 years, it will need 10,000 acre-feet to deal with the worst-case drought scenario. The city is looking at desalination as its major strategy. He said there are protests to the city's application before the state engineer. A settlement was reached with the Village of Tularosa but not the other protestants. He told the committee that Alamogordo is rationing water now. He said the utility has a progressive rate structure and that daily per capita consumption is 134 gallons, the lowest in the state. Alamogordo has three major water projects: the Sandia project research facility, the municipal desalination facility and the use of military portable water units.

Questions and discussion of the committee addressed:

- the source of money to pay for the projects; and
- that, according to Alamogordo Mayor Dan Carroll, Alamogordo does not want to buy up agricultural lands and dry them up to supply the city, but would rather use saline water to preserve agriculture.

### **TOUR OF MESCALERO FOREST MANAGEMENT AREAS**

Thora Padilla, manager of the Mescalero Apache Tribe's Resource Management and Protection Office, led a tour of the tribe's forest management operations. Berny Ryan, David

Kirgin, Bill Hornsby and Gwen Bridge were also speakers during the outing. Forest thinning activities were visited and explanations of the resulting forest biodiversity and wildlife benefits explained. Questions and discussion centered around the economics and goals of forest management. Priorities for thinning by the tribe are in corridors near residential areas and main transportation arteries. Wildfires on tribal lands have been more manageable and less destructive as a result of the thinning operations, and habitat has improved for most species of wildlife, they said.

### **Friday, August 8**

The minutes of the Red River meeting of the committee were approved without objection.

### **HISTORY OF NEW MEXICO WATER POLICY**

Representative Stell discussed the history of irrigation. He said civilizations have come and gone depending on water. For example, he said irrigation on the Nile, the Yellow River and others resulted in sediment building up until agricultural fields became higher than the points of diversion for their water. He told the committee about plans by the Chinese to flood 800,000 acres in the Yangtze River Valley and that China's farming acreage will soon be vastly expanded, creating new competition for United States wheat producers. He said that in 1280, New Mexico had a drought that drove the Anasazi to abandon their homes and resettle along the Rio Grande. Today, he said, water is money, jobs and economic development. One company — Philips Semiconductor — uses 800 acre-feet annually in Albuquerque. He said that University Hospital is the second-largest user. Water is life and culture. The acequia culture, which was thriving before the Spanish arrived, is the foundation of New Mexico's society. But, he said, drought in the desert southwest is a recurring phenomenon that we must deal with. During the 75 years of his life, five out of every 10 years have been water shortage years. Legislators must recognize that New Mexicans live in a dry climate.

The Pecos River used to be a constantly flowing river, he said. Six streams fed into the Roswell area. Five of those streams originated from springs. He told the committee that artesian wells were first drilled in 1899. He said that the spring flow soon decreased and eventually stopped. As a result, the Pecos Valley Artesian Conservancy District was established, wells were metered, ditches were lined and irrigated acreage was taken out of production beginning in the 1930s.

New Mexico began negotiating with Texas for a river compact in the 1930s, but the total effect on the river of well pumping still has not been seen. About that time, it was suggested that getting rid of salt cedar would provide enough water to offset losses from ground water pumping. The compact that was ultimately signed with Texas prohibited any reduction in the flow of the river that resulted from any human activity, but the state engineer approved more drilling permits anyway. For 34 years, New Mexico delivered 10,000 acre-feet a year less than was required under the compact. Subsequently, in the 1960s Texas sued. In 1989, the United States Supreme Court ordered New Mexico to pay Texas \$14 million. If the Carlsbad Irrigation District (CID) had joined with Texas in the lawsuit (which some members feel it should have), the state would

have had to ensure the CID its full allocation. In the *Lewis* case (the Lower Pecos water rights adjudication lawsuit now pending before Judge Byrd) the CID has been asking for a priority call on the river in order to obtain the district's rightful share of the water. The ISC has been using the lease purchase program to satisfy the CID's water rights for approximately the last 12 years. Since the drought hit, that is impossible, Representative Stell said. The state will have the same problems on all the other rivers, but if it can get through the Pecos problem, it will be able to address those other problems more effectively.

For this reason, he said, the ISC appointed the Pecos River Ad Hoc Committee to negotiate a consensus settlement. All the parties came up with an agreement, and HB 417 was the result. The state has probably appropriated \$40 million since 1992, which is 1/164th of the annual state budget. That is not a huge amount considering the importance of water to economic development and compared to what the state spends for education and health, Representative Stell said. If the legislature does not fund the state engineer for the work given to him, his hands are tied.

The New Mexico Finance Authority was created in the early 1990s by legislation that the late Senator Eddie Lopez sponsored to fund infrastructure projects. That has been a good program, Representative Stell said. Three or four years ago, the state created the Water Trust Fund to help address the need for some huge, \$2-\$4 million projects. That year, the state had \$600 million in new revenue. But Governor Johnson vetoed the bill with funding and signed the bill that had no funding. Last year, under Speaker Ben Lujan's leadership, the state put \$10 million into the Water Project Finance Act. The state has a board and a mechanism, but is putting any money approved into immediate expenditures for emergency projects rather than creating a trust fund. The state has not yet come up with a way to finance the major projects that the state and its economy are going to depend on for life, he said.

These projects include expenses that will be needed to implement a settlement agreement with the Navajo Nation so Gallup and chronically underserved chapter houses can have water. On the Ogalalla, T. Boone Pickens has put together 150,000 acre-feet of water in Texas to sell. Maybe New Mexico should allow private entities to profit from water so that someone can deliver the resource to where it is needed. There has been a 90 percent turnover in the legislature since Representative Stell came to Santa Fe 17 years ago. Maybe that is why water needs get confused with local pork in legislators' minds. But water is more important than small projects in the districts. If the state does not get the water, there will not be any need for small capital projects because there will not be any people left in New Mexico to benefit from them.

Questions and discussion among the members addressed:

- transfers of water out of the Pecos Basin, such as Bonito Lake water being piped to the Tularosa Basin never to return to the Pecos Basin;
- 5,000 domestic wells between Ruidoso and the Pecos River affecting flow;

- the creation of an Indian water settlement fund to appease the federal government concerning what the state will contribute to settlements with tribes and the potential for the Water Trust Fund to be used for that;
- salt cedar removal results;
- that stakeholders may have to lobby the governor to sign water conservation bills;
- fairness in water rights settlements; and
- the need for consistent water administration policies statewide.

## **GROUND WATER MANAGEMENT**

John Jones, legislative liaison for the rural water users' association, told the committee that conservation is only an interim solution, but if it is not applied to agriculture, it does not mean much on the whole. He said that Senate Bill 554 was a good idea but was too quick on deadlines, and it left out agriculture. He asked who makes the decision on what constitutes best use. The constitution treats all uses equally, he said. He testified that the new criteria for the Estancia Basin issued by the Office of the State Engineer allow too many inchoate rights, which are now twice as much as the actual use. Therefore, any estimation of future depletions are tripled. The state engineer's designation of the basin as a critical management area means that existing water rights cannot be moved. The state engineer automatically grants extensions for use of water from permitted domestic wells even though many of those wells are very old and the estimated use grossly exceeds the actual use. This hurts the valley's economy and distorts the real water situation.

Questions and discussion by the committee addressed:

- conservation programs in the Estancia Valley;
- that households' average use of 200 gallons a day reflects different values of people in this rural area;
- the pumping of septic tanks;
- rate structures of rural water utility systems;
- that there are 180,000 acre-feet of water rights in the basin compared to 60,000 acre-feet actually being pumped and an estimated six million acre-feet of potable water remaining in the basin, with 83 million acre-feet of brackish water; and
- potential inter-basin transfers.

## **ABANDONED WELLS**

Ray Hardy, a domestic water well driller from Lea County, expressed his concern about wells that are not in compliance with good practices as far as well safety. He said that old wells are not properly capped or filled. Lots of them were drilled back in the 1920s or 1930s. Some of those produced 1,000 or 2,000 gallons per minute and made somebody money over the life of the well. Safety should be a responsibility of the user as a price for using public water. He asked the committee to support legislation to require sufficient closure and filling of abandoned wells.

Questions and discussion addressed:

- existing rules;
- directing a letter to the appropriate agency regarding the cost of doing such a thing or to recommend legislation;
- using PVC casing in sandy soil; and
- regulations for standards in each particular area.

## **SACRAMENTO BASIN ISSUES**

Russ Wright and Bobby Melton, representing the eastern mountain chapter of the Sacramento Water Users Association, told the committee that they represent over 100 families. They said that proposed wells in the Salt Basin threaten depletion of water in the basin. Three groups have applied for water totaling 236,000 acre-feet a year. Mr. Melton and Mr. Wright are worried that the mountain watershed will not sustain this. They asked the committee to make the water administration system equitable by allowing better participation, providing better information on aquifers and watersheds. They said that water is disappearing in the Sacramento Mountains, wells are drying up and streams are disappearing. The Sacramento River is a trickle, they said. Data collection in the area ended in the early 1990s, and they do not know why. There is a great lack of information on existing resources, they said. The state should heed the warnings of those who want to mine the Salt Basin. It is too late if the state engineer issues permits before knowing the consequences. They asked the legislature to fund a study of the Sacramento watershed.

Jim Brochman, attorney for the Last Chance Water Company, one of the applicants for well permits in the Salt Basin, said this may not be the proper place to discuss applications pending before the Office of the State Engineer. He said the law prohibits the state engineer from approving a permit if it impairs existing rights or is against conservation or the public welfare. He disagreed that protests are too difficult.

Jim Scarentino, New Mexico Wilderness Society, told the committee that he is working with the Last Chance Water Company. He said that the federal Bureau of Land Management (BLM) is not taking care of the water there and that some oil company is contaminating certain areas.

Questions and discussion addressed:

- the BLM office that has jurisdiction over the Salt Basin;
- when the state engineer declared the Salt Basin, 2000;
- unappropriated ground water in the basin; and
- where the water will be used — many places in and out of state.

The committee adjourned at 1:00 p.m.